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ABSTRACT

Designed to help child care centers in their search for liability insurance, this report explores the controversy about insurance provision, and offers advice on how to combat high rates and locate policies offering the most protection. Chapter 1 reports on how insurers justify their treatment of day care centers as high risk enterprises. Discussion centers on insurers' fear of liability for criminal acts, such as child abuse, and on controversy over data showing that the insurance industry has recently lost money on child care premiums and that substantial increases in child care claims have occurred. Chapter 2 offers tips on how to buy liability policies wisely. Topics include claims-made versus occurrence forms, surplus lines versus admitted carriers, limiting claims payments, child abuse exclusion, legal defense costs, and the vulnerability of child care providers to a variety of mishaps. Chapter 3 describes company criteria for coverage and rate structure. Chapter 4 indicates how to combat high insurance rates, discussing tighter supervision and higher premiums, self-insurance, marketing assistance plans and joint underwriting associations, aggressive actions taken by Florida and Maryland to force the insurance industry to accept child care as a risk, and the government's claim that the tort system is to blame for the liabiity insurance crisis. Appendix A provides a list of insurance companies that offer new policies to child care providers. Appendix B is a glossary of terms. (RH)

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Strategies for Survival

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Child Care Insurance Crisis:

Strategies for Survival

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Child Care Insurance Crisis:

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INTRODUCTION

Enid Rogers, director of the Northeast South Dakota Head Start program, whose liability insurance premiums for five centers increased last year from $15,000 to more than $40,000 annually, faces the same insurance problem confronting scores of other child care providers.

The severity of this problem for Rogers and other child care providers became apparent last summer when child care advocates testified before a packed congressional hearing that an insurance crunch had reached crisis proportions.

Insurance companies in every state but Colorado were canceling policies for family day care providers. Policies still available carried huge price tags--about $800 per year, in some cases a $700 increase from previous annual premiums.

The situation for center-based providers was no better. The National Association for the Education of Young Children reported it was receiving 200 calls a week from frantic providers who either had their policies canceled midterm, or were slapped with enormous premium increases.

The problem was documented with surveys conducted in the states. Of 86 child care centers surveyed in Michigan, half had their liability policies canceled or not renewed.

Of 65 centers surveyed in Indiana, one-fourth had their policies canceled or expected them to be dropped and one-third reported rate increases from 10 percent to 400 percent.

Advocacy groups reported that child care homes and centers had closed down for failing to meet state licensing standards that required providers to carry liability insurance.

After children's advocates complained there were no claims data that would categorize child care as a high risk business, the nation's largest insurance services organization produced some.

However, the validity of data showing the property/casualty insurance industry suffered a $3 million loss from child care in 1984 has been informally contested by the General Accounting Office, and even some insurance executives admit the figures may be twisted.

One year later, the liability insurance problem continues to plague child care centers.

The average liability payment per child in a center has leaped from $20 to $25 in 1984 to between $50 and $75, says BMF Marketing Services, an insurance brokerage company.

Insurance premium increases are crippling the budgets of child care facilities. The federal Head Start program, for instance, could pay anywhere from $11 million to nearly $25 million to cover increases in liability insurance premium rates this year, based on BMF's data.

Soaring insurance premiums are the result of several problems, experts say, including cyclical financial trends in the insurance industry, premium price wars that drove the industry into the red and forced insurers to abruptly jack up rates, lower interest rates on insurance company investments, outlandish court awards on claims and sexual abuse of children--the problem that has received the most public attention.

But in a recent report, the General Accounting Office found that premium increases have far exceeded the level needed to earn a profit for the industry.

Rate increases of 30 percent would be sufficient to break even, compared to the 200 percent to 300 percent increases reported in a survey of child care providers conducted by the federal government's interagency Tort Policy Working Group.

This special report by Report on Preschool Programs

Editor Jane Koppelman--designed to help child care centers in their search for liability insurance--explores the insurance controversy and offers advice on how to combat high rates and find policies that offer the most protection.

1

Insurers Justify High Risk Treatment Of Child Care

In justifying insurance premium increases and cancellations for child care centers, insurance companies cite sexual abuse of children as the primary reason.

Though it is of little comfort to providers, insurers emphasize that child care is not being singled out by their industry for harsh treatment but is one of a number of businesses blacklisted as a high risk. Nurse midwives, nuclear power plants and chemical industries are among the others.

But as the vice president of the National Association of Insurance Commissioners put it, the entire day care industry is being penalized because of incidents of child sexual abuse that allegedly occurred in just a few centers.

> ***"When a company is faced with a money problem, it gets rid of the business" that brings in the least profit.***
>
> —Fred Seifert, executive, Marsh and McLennan

More than a dozen insurance officials interviewed for this report, however, said the potential for huge claims involving child sexual abuse is enough to scare off much of the property/casualty market, which is the liability insurance market for child care.

"When a company is faced with a money problem, it gets rid of the business" that brings in the least profit, said Fred Seifert, an executive with Marsh and McLennan, brokers now distributing the Continental child care policy.

Child care has always been a small, low-profit market for insurers and now is more of an undesirable market to insure because of the potential for large claims due to alleged child abuse, said Seifert.

Whether they believe the insurers' justifications or not, child care providers need to understand the arguments to prepare themselves for their search for liability insurance coverage.

Insurers Fear Liability For Criminal Acts

Although none of the insurance companies interviewed for this report could identify one instance in which an insurance company had to pay a court award in a child sexual abuse case, the American Insurance Association says there have been out-of-court settlements.

Insurers are claiming large losses in child sexual abuse claims that are settled out of court, which makes it harder for the industry to collect data on claims losses to child care, according to Patricia Casey, spokeswoman for the AIA.

And several carriers, including Aetna Life and Casualty Insurance Co., St. Paul Fire and Marine Insurance Co. and Mission Insurance Co., said they either had child abuse claims that were under investigation or already in court and therefore could not discuss them.

Insurers say sexual abuse of children is a particularly tough problem for the companies for two reasons: children who suffered an injury have until the age of 18 to file a lawsuit; and insurers say they can't predict if courts will make them pay out claims on intentional criminal acts like child sexual abuse, which insurers did not expect to be held liable for.

Industry officials point to recent court decisions in other liability areas where insurers had to pay out claims on incidents their policy contracts were not intended to cover. They anticipate the same outcome for child sexual abuse.

One court decision often used to illustrate the vulnerability of insurers is a pollution liability case in which a New Jersey industrial plant was slowly leaking waste into a nearby river.

Although the pollution insurance only covered sudden and

accidental mishaps, the court required the company to pay claims incurred by the slow leak.

"Even exclusions don't necessarily hold up in court," said Frank Neuhauser, vice president of AIG Risk Management Inc., referring to this case. AIG is a New York City-based actuarial firm.

> ***"Even exclusions don't necessarily hold up in court."***
>
> —Frank Neuhauser, Vice President, AIG Risk Management Inc.

The policy of "joint and several liability," which many states adhere to, may also increase the stakes for insurers in a child abuse claim.

Under this policy, courts can require a defendant who is only slightly responsible for a plaintiff's loss to pay the entire loss because of the financial irresponsibility of a co-defendant who is a larger contributor to the injury.

According to the Association of Trial Lawyers of America, nine states have abolished their joint and several liability policies--Colorado, Utah, Wyoming, Indiana, Iowa, Kansas, New Mexico, Oregon and Vermont.

Eleven states--Oklahoma, Connecticut, Michigan, Minnesota, Florida, California, Alaska, New Hampshire, New York, Washington and West Virginia--have placed some kind of restrictions on their joint and several policies. The majority of states, however, still adhere to the joint and several liability code.

David Fisher, underwriting manager for the San Francisco branch of Aetna Casualty and Life Insurance Co., said several child abuse claims have been filed against Aetna, all of them still in the investigative stage.

"Attorneys sue everybody in sight," said Fisher. In a domino pattern, four suits were filed in one particular child physical abuse case still being investigated, he said.

An employee was sued for committing the abusive act, the immediate supervisor was sued for negligent supervision, the director of the child care center was sued for negligent hiring and the corporation that owned the center was sued for not having closer control over the director's choice of hiring, said Fisher.

Since California adheres to a joint and several liability policy, if the case ever enters court and the center is found 1 percent liable and the employee is found 99 percent liable, Aetna would have to pay the entire claim if the employee cannot pay his/her share because the company insures the center, and not the employee, Fisher explained.

> ***"Accidents arise out of negligence, but these are intended acts."***
>
> —Tim Leach, attorney, Mission Insurance Company

Tim Leach, attorney with the Mission Insurance Company, the nation's largest day care home insurer until it pulled out of the market in September of 1985, said Mission has paid money on child sexual abuse claims in out-of-court settlements.

Leach also described a pending child abuse case against Mission in which the company might have to pay an award for coverage it never intended to provide.

In this case, the 15-year-old son of a family day care provider molested a five-year-old child in the provider's care. After the adolescent was found guilty, the parents of the child filed a civil suit against the provider for negligent supervision.

According to Leach, if the court requires Mission to pay the award, it would be stretching Mission's coverage under negligent supervision.

Mission's policy did cover negligent supervision for common occurrences like slips and falls. "Accidents arise out of negligence, but these are intended acts," said Leach.

The Data Controversy

Data from the Insurance Services Office, contested by child care advocates and informally challenged by the General Accounting Office, shows the insurance industry lost money on child care premiums in 1983 and 1984, while the number of child care claims from 1983 to 1984 increased substantially.

Based on the claims reports of less than 1,000 ISO members, ISO says insurers earned $4 million in child care premiums in 1983, and suffered $5.5 million in losses. Losses were higher in 1984, with the industry taking in $4.6 million and paying out $7.8 million. At the same time,

ISO says child care claims rose from 612 in 1983 to 840 in 1984. However, child care advocates and industry officials both say the information cannot accurately represent the situation.

According to Sean Mooney of the Insurance Information Institute in New York, the ISO data excludes many family day care providers who are insured through homeowners policies, and employer-sponsored child care facilities, or facilities housed within a larger organization under an umbrella policy.

One auditor from the General Accounting Office questioned whether the information reflected losses only from child care. ISO's category entitled "day nurseries" which insurers are expected to report child care losses under, is ill defined, she said. Because ISO does not monitor how underwriters categorize their losses, losses from other lines of liability could be lumped with "day nurseries," the auditor said.

> ***"The insurance industry is basing its negative characterization of child care on data that even the industry has acknowledged are problematic."***
>
> —Deborah Phillips, former Director Child Care Information Service, NAEYC

Last year the GAO turned down a congressional request to collect actuarial information on child care because it found no available, accurate data on claims. "That's the way the insurance industry is," said the GAO auditor. The industry bases decisions on "anticipated risk," which is "nonquantifiable," said the auditor.

Deborah Phillips, former director of the Child Care Information Service for the National Association for the Education of Young Children, has vehemently criticized the ISO data.

After testifying before the House Judiciary Committee on the insurance crisis earlier this year when ISO loss data on child care was presented, Phillips wrote in a letter to Committee Chairman Peter Rodino:

"The insurance industry is basing its negative characterization of child care on data that even the industry has acknowledged are problematic. This appears to be another example of the industry's desperate attempts to generate data to justify decisions that were based on sensational-

istic headlines and personal biases, rather than on actuarial facts."

Phillips has testified numerous times before Congress insisting there are no claims data to support the classification of child care as a high risk. A limited survey done by the NAEYC of 269 child care facilities found that nine out of 10 programs had never filed a claim on their liability insurance policy.

Of the 10 percent that filed claims, 80 percent were under $500, and the highest single claim was $15,000.

However, claims data showing a financial loss in family day care is reported by BMF Marketing, which was the insurance broker for Mission Insurance. According to Joseph Silverman, BMF executive vice president, there were 159 claims in family day care from 1979 to 1983 from providers who used BMF as a broker.

While the average claim was for $16,000, the highest was $800,000. Silverman admitted that 159 claims over four years is a modest amount "but the problem has never been frequency" with child care. The problem with insuring child care is the unknown potential for claims filed due to accidents years after the child has left a day care program, said Silverman.

Many times an insurance company is faced with a hefty claim some three to seven years after a child has left a day care program, when a physical deformity due to a prior accident at the facility finally manifests itself, he said.

2

Liability Policies: Tips On How To Buy Wisely

Given the litigious-minded state of our nation, child care providers would do well to shop around for the most comprehensive coverage they can buy.

However, considering the reality of today's restricted insurance market, providers should be aware of potential inadequacies in whatever policy they purchase.

Liability risks in the child care field are numerous. Providers can be sued for anything from sexual abuse to food poisoning to auto accidents in provider-owned or rented vehicles transporting children to and from the facility.

The insurance industry acknowledges the bulk of payouts on child care claims cover the medical bills from injuries due to slips and falls. Most general comprehensive policies will cover medical expenses and civil suits resulting from ordinary "playground" accidents.

It is the freak occurrence--an incidence of child sexual abuse or a bus accident--that attracts the severe claims.

Some companies still in the child care market allow providers to purchase coverage above the limit the policy stipulates. An umbrella policy enables people to protect themselves against catastrophic lawsuits that would surpass their policy limits. The umbrella policy kicks in when the limits of the primary policy are reached.

For instance, Church Mutual Insurance Company offers a primary, or regular policy of up to $1 million, and then

offers up to $3 million coverage under an umbrella policy for an added fee. St. Paul Fire and Marine Insurance Company offers up to $1 million for a primary policy, and up to $5 million under an umbrella policy, said Fred Themmes, senior underwriter for St. Paul.

Rates for St. Paul's umbrella coverage are calculated by increments of $1 million. For the first $1 million of umbrella coverage, providers determined to be good risks would pay about 40 percent to 50 percent of the premium cost for the primary $1 million policy.

Most insurance policies don't fill every liability gap.

Each $1 million of umbrella coverage after that would be at a cheaper rate than the one before.

Most insurance policies, however, don't fill every liability gap, and according to the Insurance Services Office, most policies written for child care now tack on child abuse exclusions (called policy endorsements) that are intended to protect the insurer from paying claims due to child abuse.

Much like general policies, the child abuse exclusions vary and can sometimes include minimal coverage, depending on the company writing the clause. Child abuse can include physical or sexual abuse depending on how the exclusion is written.

The following is a list of topics providers should keep in mind when questioning insurance agents about policy coverage.

Claims-Made Vs. Occurrence Forms

Before exploring the specifics of risk coverage, it's important to know how long a policy will remain in effect. Generally, there are two types of policies--a "claims made" or an "occurrence policy."

A claims-made policy usually requires the provider to have a policy in force when the accident occurs and when the claim is filed.

An occurrence policy, which is the most helpful to a child care provider, usually will cover claims filed years

after a policy has expired as long as the accident or injury occurred when the policy was in effect.

Until recently, most child care policies were occurrence policies, according to Patricia Casey, counsel for the American Insurance Association. But as more states approve the claims-made form, insurance executives say it is only a matter of time before the bulk of the industry adopts the policy, as insurers seek a limit to their responsibility to cover claims.

Currently, 41 states have approved the Insurance Services Office claims-made form released January 1986, while the rest of the states, except three, are considering the form.

Hawaii, New York and Washington have rejected the ISO claims-made form. Delaware, Massachusetts, Michigan, Nebraska, New Jersey, Texas, Vermont and Virginia are still considering the form, ISO reports.

Claims-made forms are usually less expensive than occurrence forms because the provider is not paying for extended coverage, according to June Bruce, ISO spokeswoman.

Maryland Casualty Insurance Company, which insures about 1,000 Kinder-Care centers nationwide, is requiring a claims-made policy for new and renewed policies--where states allow.

Continental Insurance Company offers a claims-made form that deviates from the norm because it offers limited coverage beyond the life of the policy. Coverage is extended in two ways.

If, while a policyholder, a provider reports an accident to Continental on which no claim has been made, the provider is covered if the child ever files a claim on that incident.

That coverage continues even if the provider is no longer with Continental at the time the suit is filed, as long as Continental was notified of the incident when the provider had the policy, said Fred Seifert, an executive with Marsh and McLennan, brokers offering the Continental policy.

Providers are urged to keep detailed records of all accidents on their premises, he said.

Occurrence policies differ in that they will cover claims resulting from prior incidences after a policy is terminated even if the provider did not report the incident when the policy was in effect, according to Seifert.

However, if a company can prove that a provider deliberately withheld information of an incident that later resulted in a claim after the policy expired, the insurance will not cover the claim, he added.

The Continental claims-made policy also resembles a limited occurrence policy through an optional five-year "policy tail" or extension. Under this provision, a provider is covered for any claim filed up to five years after the provider's policy has expired without having to report the incident.

Providers also have five years to report any incidents that may result in later claims, said Seifert.

ISO provides a claims-made policy used by many insurers that offers an automatic five-year tail that will cover claims during that time period as long as the incident resulting in the claim is reported to the insurance company within 60 days of the policy cancellation or non-renewal, according to ISO spokeswoman Bruce.

Surplus Lines Vs. Admitted Carriers

The trade-off is a higher risk involved with buying a policy from a surplus lines carrier.

One type of insurance company generally doesn't have to comply with state insurance rates or regulations and, while a riskier industry, is considered more able to respond to the needs of a specialized market, such as child care.

These insurers are called excess surplus lines carriers, or non-admitted carriers, and they provide a sizable share of insurance for the child care market.

Surplus lines carriers must be licensed only in the state where their headquarters are located and can do business in other states without being licensed, according to Richard Bouhan of the National Association of Professional Surplus Lines Offices.

In contrast, admitted carriers must be licensed in each of the states they do business. While some admitted carriers say they have shied away from the child care market until states approve a claims-made policy or other changes to lower their risks, surplus lines companies can usually amend their policies without state approval.

The trade-off is a higher risk involved with buying a policy from a surplus lines carrier. Admitted carriers participate in guaranty funds that protect their policyholders if the company becomes insolvent.

The guaranty fund covers any unpaid claims of the insolvent carrier, said Bouhan. New Jersey is the only state that has set up a guaranty fund to protect excess surplus lines consumers, he said.

Also, many surplus lines carriers don't have to comply with regulations in most states that require the insurer to provide advance notice, usually 30 or 45 days, of a policy cancellation.

The process of finding a policy with a surplus lines carrier differs from that of an admitted carrier. Insurance agents deal with specially licensed wholesale brokers who act as intermediaries between the agent and the surplus lines company.

With admitted carriers, agents deal directly with the insurance company without the use of an intermediary.

Limiting Claims Payments

Insurers are taking extra precautions to limit their liability risks. Several companies interviewed for this report are imposing aggregate limits, or caps, on annual policy limits.

ISO has included the option to place aggregate limits on new claims-made and occurrence forms. Companies can employ the option if they adopt the ISO form in the states that have approved them.

Before aggregate limits, insurers placed limits on awards paid out "per occurrence," or per incident, said Bruce. This left companies vulnerable to exceed their total policy limits if many claims were paid out.

Insurers cite the Jackson Township water pollution case, where each person who filed for damages for drinking from the same body of polluted water was considered an "occurrence" by the courts, instead of treating the act of polluting the water as one occurrence, said Bruce.

An officer from Church Mutual Insurance Co., which insures child care centers in or affiliated with churches, said the company will soon place aggregate limits on child sexual abuse payments so that one policy limit would be divided between many plaintiffs.

It is "very rare" that a molester in a center will sexually abuse just one child.

—underwriter,
Church Mutual Insurance Co.

It is "very rare" that a molester in a center will sexually abuse just one child, said the official, who asked not to be named. An aggregate policy limit prevents plaintiffs from each collecting the maximum policy limit, he said.

Maryland Casualty Insurance Co. has already instituted aggregate limits of $500,000 per policy, according to Donald Hutson, president of the company.

Child Abuse Exclusion

Under most child abuse exclusions, companies do not have to pay claims for any legal action arising out of the physical or sexual abuse of a child.

The exclusion also usually protects the company from paying a negligent supervision claim against a child care director who is unaware of any criminal act committed by an employee, according to Frank Neuhauser, vice president of AIG Risk Management Inc., an actuarial firm in New York.

The problem is, "You're never sure that your exclusion is valid until it's tested in court," said Woody Wright, a spokesman for CIGNA, echoing the sentiments of Neuhauser and several other insurance executives who fear the courts may ignore such exclusions and hold the insurer liable for exorbitant claims.

Even so, providers should ask what the company intends to omit with its exclusion, as there are different types of exclusions. For example, it is important to know if the policy covers both child care owners and employees, accord-

ing to James Strickland, a child care professional in Austin, Texas, who negotiated the terms of the child care policy now offered by Continental.

Many policies don't cover the actions of employees toward children. In some cases, however, a policy can be extended to the employees for an extra charge.

ISO has written a standard child abuse exclusion that is used by many insurers. The exclusion says:

> "Bodily injury and property damage coverage provided under this endorsement does not apply to bodily injury and property damage arising out of sexual molestation, corporal punishment or physical or mental abuse inflicted upon any person by or at the direction of an insured, an insured's employee or any other person involved in any capacity in the day-care enterprise."

In the case of the St. Paul Fire and Marine Insurance Co. policy, there are two endorsements, or variations, according to Fred Themmes, senior underwriter for commercial lines.

One excludes coverage for any claim, civil or criminal, related to physical and sexual child abuse. But for a 15 percent increase in the premium, a child care provider could get $250,000 worth of coverage for a civil negligence suit filed against her, excluding coverage for the accused employee.

Under California's Marketing Assistance Plan, Aetna, on the other hand, carries a child abuse exclusion that won't cover civil negligence suits arising out of an act of child abuse, according to David Fisher, underwriting manager with the San Francisco branch of Aetna.

Legal Defense Costs

Providers also should find out to what extent legal defense costs are covered for liability claims that reach court, and if the defense costs are subtracted from the policy limit.

The current ISO standard liability policy, used by many

insurers, covers attorneys fees in any civil liability suit without affecting the policy limits.

However, under the ISO form, insurers terminate their responsibility to pay defense costs when the costs reach the limit of the policy.

For instance, under a $100,000 policy, the provider would get up to $100,000 worth of defense coverage and still qualify for $100,000 worth of claims coverage, according to ISO spokeswoman June Bruce.

But defense costs for criminal acts, subject to court interpretation, are not covered under the ISO form, said Bruce.

Providers also should find out if their policy will cover legal defense costs for civil suits filed for bodily injury and personal injury. Only the state can file a criminal suit against the accused, but in cases of child sexual abuse, parents have been bringing civil charges against an accused for inflicting bodily or personal injury on the child.

Topa Insurance Co, a surplus lines company underwriting family day care providers in California, excludes defense costs for all criminal suits and administrative hearings but does cover the legal fees for civil suits filed for bodily and personal injury, according to Joseph Silverman, executive vice president for BMF Marketing Services, the brokers for Topa.

According to Silverman, many criminal suits for child sexual abuse are dismissed for lack of evidence, but parents can still file a civil suit claiming bodily injury or personal (emotional, psychological) injury.

Continental, in comparison, will generally only cover defense costs for civil suits claiming personal, and not bodily injury, according to Seifert.

Continental also subtracts the costs of defense from the policy limits in civil liability cases.

This clause has turned many state insurance commissioners against the policy, which has been approved in only 18 states so far, said Elinor Guggenheimer, head of the Child Care Action Campaign that negotiated the terms of the policy with Continental.

States would prefer if the money pool for defense costs was separate from the pool to pay out claims, she said.

> ***"In reality, [legal] expenses don't even approach $100,000."***
>
> —Fred Seifert, executive, Marsh and McLennan

But according to Marsh and McLennnan executive Seifert, insurance commissioners are being pressured by trial lawyers to reject the policy because it cuts into attorneys' profits.

"In reality, [legal] expenses don't even approach $100,000," while Continental offers policy limits of $500,000 or $1 million, said Seifert.

ISO, with the support of the commercial/property lines insurance industry, is working on a new form that would cap defense costs.

One proposed formula would allow defense costs to be paid out of the policy limits once 50 percent of the policy limit was spent on defense, according to ISO spokeswoman Ann Lavie.

However, Lavie said ISO has temporarily shelved the idea to wait and see if the insurance market recovers from its financial slump.

The Reagan administration also proposes capping defense costs at 25 percent of the cash amount awarded by the court. (That proposal is discussed in more detail in chapter 4.)

According to Strickland, the most dangerous blow to the child care community is that insurers are now writing policies that exclude defense costs for alleged criminal acts of child abuse at a time when most people are crying wolf over child abuse.

Data reported from Douglas Besharov, a researcher with the American Enterprise Institute, shows that 65 percent of child abuse allegations are falsely reported.

Strickland recently negotiated a policy for his home state of Texas that will help to fill that defense cost gap. The Midwest Mutual company is now underwriting a pre-paid legal protection plan that offers child care directors up to $10,000 of legal expenses for $85 to $120 a year per employee.

Depending on the success of the policy, Midwest Mutual, which is licensed in 45 states, will consider extending coverage to the child care industry nationwide, according to Ray Rische, president of Midwest Legal Services Inc., a branch of Midwest Mutual.

How Vulnerable Am I?

Child care providers are vulnerable to a number of other mishaps. Lawsuits filed because of food poisoning, an auto accident or children who injure themselves following the directions of an instructor are just a few examples.

Although some agents or insurers say a general comprehensive policy is sufficient to cover most of a provider's needs, providers should investigate the limits of their policy.

Food poisoning sometimes falls under the category of product liability. Maryland Casualty, for instance, does not insure for product liability unless food is made on the center premises, said company President Donald Hutson.

Most of the Kinder-Care centers are catered and have their food brought in, which the company will not insure, he added.

Professional liability lawsuits are filed against an operator or instructor for damage caused by professional activities such as health screening, dispensing medication or teaching.

Providers also can be sued for failing to notice a child's learning disability that is diagnosed in a later grade.

Many companies, including Continental, exclude professional liability coverage, although it can be purchased as an add-on to the general liability policy through some companies.

Continental also excludes coverage for accidents incurred while transporting children to and from the facility and damage to property the facility owns, while it extends coverage for damage to property the facility does not own.

Suits filed for contagious illnesses and injuries incurred on field trips (away from the home or center) also should be questioned in the check list of policy coverage.

To help educate providers about the ins and outs of liability coverage, the Human Services Risk Management Exchange, a Texas-based organization, has prepared a booklet entitled "What's Covered/What's Not?: A Liability Insurance Questionnaire For Programs That Serve Children."

The document can be purchased for $25.00 from Human Services Risk Management Exchange, Box 168, 8129 N. Lamar Blvd., Austin, Texas 78753. Publishers expect a delay in shipping because of the high demand for the publication.

3

Company Criteria For Coverage And Rate Structure

With varying degrees of availability, at least 13 admitted carriers and a handful of surplus lines insurers are offering liability policies to new applicants in the child care field.

Many companies, however, are not terribly excited to be included in this list, and have said that they would insure child care providers only in rare instances.

"It would have to be a very, very unusual situation," said Richard Koslack, chief underwriter with Great American. The company would write a child care policy for "an agent that's top notch and gives us a lot of profitable business over a number of years," he added.

Strict Criteria

A number of companies that are writing child care policies are setting stringent criteria for providers to qualify for coverage. These standards, which call for low staff/child ratios, adequate teacher training and safe facilities, are difficult for many child care providers to meet, partially because they are expensive.

But while the insurance crisis has crippled many child care businesses, some advocates say it may serve to raise the quality of child care programs nationwide by setting performance standards that are higher, in most cases, than minimum operating requirements imposed by the states.

CIGNA, which has agreed to insure centers affiliated with

the National Association for the Education of Young Children, has decided to use NAEYC's criteria for exemplary centers as a scale to measure a center's liability risk.

CIGNA's decision to use the standards automatically shuts off a large segment of child care centers from eligibility, since many centers don't meet the criteria.

The eligibility policy came as a blow to the NAEYC, as the group's goal in securing an insurance policy was to help solve the availability crisis for NAEYC members.

The standards list model staff qualifications that, for instance, require an early childhood teacher to have a bachelor's degree in early childhood education/child development and staff/child ratios of 1:8 to 1:10 for four-year-olds.

This ratio is high by many state standards. For instance, Indiana, Kansas and Michigan all call for 1:12 ratios for four-year-olds. Florida requires a staff/child ratio of 1:20 for the same age child.

Essex Insurance Company, a surplus lines carrier that underwrites more than 750 family day care homes and child care centers in several states across the nation, has also set certain criteria.

Essex requires the facility to be inspected by the local Health Department and offers its lowest premiums to providers with 1:1 staff/child ratios for children one year of age and younger.

For 3- to 5-year-olds, staff-child ratios should be 1:10 or 1:12, according to Jacque Ash, senior underwriter for Essex. Ash said the company also looks at the hiring practices of child care providers to see if they are conducting background checks.

Essex also asks what other residents live in the home provider's house, and if any large pets roam free. All of these criteria help to determine what kind of risk the facility is and helps the company to set appropriate premium rates, said Ash.

The Hartford Insurance Company, which now offers insurance to the child care market through marketing assistance plans in a number of states, requires that

a center be licensed by the state and that all employees have certified first-aid training. (For details on marketing assistance plans, see chapter 4.)

The company's required child/teacher ratio is as follows: 1:4 for children under three; 1:6 for 3- to 5-year-olds and 1:12 for children over 5.

Rate Structure

An insurance premium is based on the cost of a given unit of insurance, called a rate. Rates are usually calculated on a per-child or per-square foot basis, and vary depending on the claims history of different regions of the nation.

ISO, the largest insurance services organization, provides a wide range of advisory, rating, actuarial and statistical services relating to the property/casualty insurance field. In addition to occurrence and claims-made policy forms, ISO develops advisory rates nationwide that are adopted by many property/casualty underwriters.

ISO advisory rates for child care would be much higher if rates were based solely on claims losses incurred by child care providers

—June Bruce, spokeswoman, ISO

According to June Bruce, spokeswoman for the Insurance Services Office, ISO advisory rates for child care would be much higher if child care rates were based solely on claims losses incurred by providers.

However, the ISO rates are based on the general claims history of a group called "Owners, Landlords and Tenants," which includes other groups such as schools and governments.

Losses under that category are calculated nationwide and then broken down by location.

The rates are then devised to cover losses in any particular region of the nation. Therefore, child care rates are affected by losses or good claims history of organizations lumped under the same category as child care.

Bruce said that the particularly bad losses child care suffered in 1984 ($1.69 lost on every $1.00, according

to ISO) were smoothed by a better track record from other groups under "Owners, Landlords and Tenants."

ISO rates for child care are now calculated per square foot, but starting in January the rates will be based on the number of children in the facility, said Bruce.

ISO has hundreds of different rates insurers use to set child care premiums depending on the region where the facility is located. These rates are available from any insurance agent or broker. Rates are set for bodily injury coverage and property damage coverage, the least expensive of the two.

For example, the cost of bodily injury coverage ranges from $2.20 per 100 square feet in North Carolina to $71.50 per 100 square feet in Nassau County, Long Island, for $25,000 per-occurrence coverage.

Policy limits offered by the various companies usually range between $300,000 and $1 million.

4

How To Combat High Insurance Rates

Opinions vary over the measures a child care provider can take to bring down liability insurance premiums.

The comments range from the belief that the provider is a powerless victim to the financial cycles of the insurance industry, to suggestions that child care providers should monitor each other's programs and lobby state officials to set limits on claims awards.

Meanwhile, the Reagan administration has announced that tort reform is necessary to bring down rates and has made a number of recommendations to achieve reform discussed later in this chapter. In addition, several states have taken action to ease the market for child care providers.

Insurance company executives have taken the middle ground in this debate. While some say they won't re-enter the child care market until there is proper legal reform, others point to precautions providers can take to lower their risk.

Tighter Supervision And Higher Premiums

Several insurers are calling for tighter quality control in programs to better assess their risks. Donald Hutson, president of Maryland Casualty Insurance Company, advised child care providers to monitor each other's programs.

Providers also should lobby for better state monitoring regulations to help lower the probability of child abuse in their programs.

Most of all, providers should lobby their state insurance commissioners to reform local laws that leave insurance companies vulnerable to massive claims, he said.

To help curb the losses in an incidence of child abuse, states should allow claims-made forms to be issued or put finite limits on policy losses. These reforms would satisfy the insurance industry and encourage companies to re-enter the child care market, said Hutson.

A claims-made form, while leaving providers more vulnerable to claims, would free insurers from covering child abuse claims filed years after the child has left the program.

Hutson said that last year Maryland Casualty paid out $20 million in claims on policies the company stopped writing in 1960 and before. The claims, however, were not for child care providers in particular.

"The child care industry has got to tighten up on the hiring of its people."

—Lawrence Fitzsimmons, Senior Vice President of Underwriting, American Reliance Insurance Co.

An aggregate policy limit caps total losses any insurer would pay out at the value of the policy. In a situation where a child care provider bought a $1 million policy and found that an employee had molested a number of children in that program, the insurer would only be liable for $1 million no matter how many children were molested.

Many insurers fear that in the case of multiple abuse claims in one program, courts would open the door for each child to claim the maximum policy amount, instead of restricting the annual limit to cover all claims in the program.

Lawrence Fitzsimmons, senior vice president of underwriting for American Reliance Insurance, says tort reform would help to decrease the risk of insuring child care but puts more of the burden on the child care industry's lack of supervising its programs and employees.

"The child care industry has got to tighten up on the hiring of its people," he said. His underwriters have noticed that some child care providers don't run background or reference checks on prospective employees.

American Reliance is renewing current child care policies but stopped accepting new clients.

Another insurance company executive remarked that insurers would re-enter the market if the child care industry would be willing to pay much higher premiums. James Smith, vice president of Fireman's Fund general liability commercial lines division, said larger premiums are needed to cover greater exposures to the insurance industry due to increased numbers of child abuse claims.

He also admitted that investment losses his company suffered have discouraged him from writing new child care policies.

In the past four years his company's investment returns have decreased from 15 percent to 9 percent, while losses on policies have increased. "If we get investment returns going up and losses going down, the insurance industry will open up considerably," said Smith.

> ***"If we get investment returns going up and losses going down, the insurance industry will open up considerably."***
>
> —James Smith, Vice President of Commercial Lines, Fireman's Fund Insurance Co.

Richard Koslack, officer in charge of underwriting for Great American Insurance Company, suggested that child care providers pool together to be able to afford group insurance at higher premiums.

Self-Insurance

Robert Hunter, former federal insurance administrator, subscribes to the self-insurance theory. Under this plan, child care providers nationwide would band together to set up their own insurance company and establish their own reserves to cover losses.

Hunter said a child care coalition would need about $20 million to start with and could base premiums on a per-child basis.

But the amount of start-up funds necessary is prohibitive to child care providers, some advocates say. "You say $20 million to a woman who earns less than minimum wage--that's horrendous," said Maribeth Oakes, advocate for The Chil-

dren's Foundation, a group representing family day care providers. While child care providers could not self-insure on their own, they might be able to band together with elementary school teachers and foster care providers to self-insure, she said.

Bills have been introduced in the Congress that would strike down laws in some states that outlaw efforts by groups to self-insure. S. 2129, originally sponsored by Sen. Bob Kasten, R-Wis., was passed by the Senate in mid-July, while a House companion bill, H.R. 5225, introduced by Reps. Ron Wyden, D-Ore. and Norman Lent, R-N.Y., is still in committee.

> ***"The only thing to make insurance companies come back into the [child care] market is their own financial status."***
>
> —Deborah Phillips, former Director, Child Care Information Service, NAEYC

While investigating a nationwide self-insurance plan, Deborah Phillips, former director of NAEYC's Child Care Information Service, also said insurance experts advised her that self-insurance would be impossible for the child care community because of its poor funding base.

"The only thing to make insurance companies come back into the [child care] market is their own financial status," she said.

Meanwhile, legislative reform is needed for the insurance industry to mandate that specific information be kept on child care losses. "We ought to work with the insurance industry and expose the myth" that child care is a high risk, high-loss market, she said.

Marketing Assistance Plans And Joint Underwriting Associations

Another avenue to securing insurance, while not guaranteeing its affordability, is to lobby state legislators to approve joint underwriting associations or marketing assistance plans.

While both initiatives would create a pool of insurers who would provide coverage, a marketing assistance plan calls for voluntary participation from insurers.

Laws that create joint underwriting associations, on the other hand, earmark a group of licensed carriers in the state (usually property/casualty companies) and forces them to share the risks of insuring child care, unless exceptions are written into the law, according to the American Insurance Association.

In addition, insurance companies participating in marketing assistance plans have the option of rejecting applicants with good reason, while companies forced to participate in joint underwriting associations that cover child care are usually always compelled to insure child care providers who are considered bad risks and cannot find insurance elsewhere.

Because insurance companies abhor the forced participation of a joint underwriting association, marketing assistance plans are a far more popular alternative.

Currently 10 states have approved marketing assistance plans to serve the child care market--California, Maryland, Maine, Missouri, New Hampshire, Pennsylvania, Vermont, Virginia, Washington and Minnesota, according to the American Insurance Association.

The list, however, is constantly expanding. The marketing assistance plan proposal also is being considered in five other states--Arizona, Nevada, New Jersey, New Mexico and New York.

In comparison, four states--Maryland, Minnesota, New York and Florida--recently approved joint underwriting associations, the AIA reports.

In California, insurance companies banded together last October and formed a marketing assistance plan to sidetrack a proposal in the legislature to set up a joint underwriting association.

Twenty-two companies under the Independent Insurance Agents and Broker's Association of California volunteered to offer child care liability coverage, and have already written 100 policies out of 350 applications sent for approval.

While the marketing assistance plan (called Cal-Care) appears to be working, state plan director Ted Owens questioned the validity of the California insurance crisis that persuaded insurers to start the marketing assistance plan.

With 40,000 family day care homes and centers in the state, and a number of companies pulling out of the child care market, the plan, which has operated since October 1985, has since June received only 450 applications, he said.

According to Owens, an application is randomly sent to six of the 22 carriers to assess the provider's risk. About 86 percent of all applicants are able to receive at least one offer of coverage, he said.

If no company in the association will offer a policy to an applicant, the association discusses the rejection reasons with the provider, and offers to perform a second assessment once the provider modifies her or his program, said Owens.

While the joint underwriting association will guarantee any child care risk, insurance "won't be cheap."

—David Corum,
Senior Research Analyst,
Minnesota Insurance Division

In Minnesota, the state recently approved both a marketing assistance plan and a joint underwriting association, using the association as a back-up for providers who are rejected by the insurers voluntarily participating in the marketing assistance plan, explained David Corum, Minnesota Insurance Division Senior Research Analyst.

Under the Minnesota joint underwriting association, all licensed casualty underwriters band together to offer one type of policy, and share in any potential gains or losses from premiums.

While the joint underwriting association will guarantee any child care risk, insurance "won't be cheap," said Corum.

An 11-member Board of Directors representing the state's casualty underwriters will set the Association's rates, and then automatically charge an extra 33 percent of the established premium rate to ensure the joint underwriting association won't run a deficit.

However, two or three board members will represent groups that could be insured by the joint underwriting association, including child care, said Corum.

Florida And Maryland Take Aggressive Action

Florida and Maryland stand out as two states that have forced the insurance industry to accept child care as a risk, and both have experienced repercussions from the industry.

In Maryland, Governor Harry Hughes recently signed a bill requiring companies that provide homeowner's insurance to family day care providers to extend liability coverage to the child care business itself.

The legislation requires companies to provide at least $300,000 worth of liability coverage for the child care business.

In addition, a family day care home provider's auto insurance company would have to extend a minimum of $20,000 in transportation coverage related to the family day care business, according to the state Deputy Insurance Commissioner Thomas Barbera.

The Maryland Committee for Children reported that many of the state's family day care home providers lost insurance on their business when Mission Insurance pulled out of the market last year.

While the new legislation is a great help to the field, the committee reports one phone call in which a family day care home provider said her homeowner's insurance policy was canceled after the bill passed.

This June, Florida became the first state to require insurance companies to roll back their premiums to January 1984 levels and require justification for any increase above that level.

No other state has done that since the late 1960s when companies were ordered to bring down auto insurance rates.

Any company wishing to increase rates above the 1984 level--before premiums began soaring--will have to present evidence of claims losses in day care that match the desired increase, according to David Voss, senior executive with the state's Department of Insurance.

The law reforms the tort system by setting a $450,000 limit on noneconomic liability awards such as pain and suf-

fering and capping joint and several liability limits at $25,000. The legislation also requires a 45-day mandatory advance notification for policy cancellations or non renewals.

While many businesses are pleased with the legislature's action, the new plan comes as a blow to the insurance industry. Aetna Insurance already has announced it will not sell any new commercial policies in the state, and there are rumors other companies also will pull out, according to an Insurance Information Institute spokesman.

Reagan Blames Tort System

President Reagan and the Justice Department claim that reforming the legal system will ease the liability insurance crisis. This spring Reagan endorsed Justice Department recommendations to limit to $100,000 awards for non-economic damages, such as pain and suffering, mental anguish and punitive damages.

The department also would cap attorneys fees at 25 percent of the cash awarded by the court. Currently, plaintiffs' attorneys receive a flat percentage--sometimes as much as 50 percent--of their clients' awards, according to a Justice Department written report.

> ***"If we put a cap on [awards], we penalize the victim."***
>
> —Robert Habush, President, The Association of Trial Lawyers of America

"Increasingly, there are indications of extraordinary abuses where attorneys receive fees in the hundreds of thousands of dollars for limited work," the report stated.

The proposal to cap awards is bitterly contested by trial lawyers. "If we put a cap on [awards], we penalize the victim, " said Robert Habush, president of the Association of Trial Lawyers of America.

The insurance industry views this explanation as a smoke screen for greed. A Justice Department task force has drawn up a fee schedule that would limit attorneys to 25 percent of the award for the first $100,000, 20 percent for the next $100,000, 15 percent for the third $100,000 and 10 percent for the remainder of the award.

The report also recommended: limiting liability for

damages to whomever is directly at fault, eliminating the practice of joint and several liability and paying economic damages over a set period of time rather than in a lump sum.

The recommendations were introduced in the Senate by Sen. Robert Kasten, R-Wis., and altered in a bill passed by the Senate Commerce Committee in July. The only measure of the above-mentioned provisions included in the Senate version was the elimination of joint and several liability for non-economic damages such as mental anguish and pain and suffering.

A similar bill, H.R. 4766, was introduced in the House by Rep. Hamilton Fish, R-N.Y., and was referred to the Judiciary Committee.

By endorsing the findings, President Reagan came down hard on "one side of the problem" by blaming the tort system for the insurance crunch and ignoring the need for reform in the insurance industry, said Deborah Phillips, former director of the Child Care Information Service for the NAEYC.

Such reforms include making information on claims publicly available and monitoring the industry's method of rate setting to justify high premiums.

CONCLUSION

The liability insurance crisis can be blamed on the courts for awarding excessive claims, the insurance industry for mismanaging its money or the news media for sensationalizing the problem of child sexual abuse. Unfortunately, this does not make the task of finding insurance any easier.

States have only recently begun to enact laws that limit court awards, lawyers fees and joint and several liability policies, and it is too early to tell if these reforms will coax insurers back into the child care market.

Until then, child care providers should not tell their insurance agents to give up when shopping for liability insurance. There is still a small group of companies willing to underwrite child care facilities.

For insurers still in the market, the focus is on quality child care programs. Companies are more likely to underwrite programs that appear safe and well-run and are therefore less likely to be sued.

For providers, this means keeping low staff/child ratios, running background and reference checks on employees and obeying or surpassing fire, health and safety licensing standards.

Despite the limited availability of liability insurance, child care providers should shop around for the most comprehensive policy they can find.

An insurer should explain if a policy offered is claims-

made or occurrence, what the policy limits are, what the limits of defense costs are and if the cost is considered separate from the policy limits.

Preparing a questionnaire of risks covered by the insurance policy is also helpful. The questions should include if the policy covers child physical and/or sexual abuse claims, professional liability, product liability and if coverage extends to the provider's employees.

In addition, providers in search of liability coverage should contact their state insurance commissioner to find out if the state has created a marketing assistance plan or a joint underwriting association to offer coverage to businesses that can't find it in the private marketplace.

Many child care advocates say communication is the tool that will bring insurers back into the child care market. The policies negotiated with CIGNA and Continental were secured because advocates explained to insurers the business of child care--how risks can be lowered through proper supervision and safety measures.

Moreover, child care advocates should fight against bad publicity in the national news media by presenting to the insurance industry the real facts about child sexual abuse--that more than 95 percent of it occurs in the home, and not in child care facilities.

APPENDIX A

Insurance Companies That Offer New Policies To Child Care Providers*

Admitted Carriers Offering New Policies

(Admitted Carriers are licensed in every state they operate in and participate in a state guaranty fund that protects policyholders if the company goes bankrupt.)

1. **Aetna Life and Casualty Insurance Co.**

Would not release any information because Aetna does not want to encourage any new business, although the company has not officially left the child care market and is active in the CalCare MAP in California.

Contact—Matthew Sheridan, 151 Farmington Ave., Hartford, Conn. 06156, (203)273-7689.

2. **American States Insurance Companies**

Type Of Policy—occurrence policy
Child Abuse Exclusion—none
Availability—available on a very limited basis in every state but: Alaska, Connecticut, Delaware, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Vermont, Rhode Island and Virginia
Coverage—child care centers
Policy Limits—up to $1 million
Rates—use Insurance Services Office advisory rates**
Contact—Jerry Gallogly, 500 N. Meridian,Indianapolis, Ind. 46204, (317)262-6262.

3. **Church Mutual Insurance Company**

Type Of Policy—now using occurrence but will soon switch to claims-made
Child Abuse Exclusion— child sexual abuse coverage up to $300,000 can be purchased for higher than usual premium endorsement
Availability—Alabama, Arkansas, Arizona, California, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Washington, Wisconsin
Coverage—only for church-run child care centers
Policy Limits—up to $1 million, $3 million for umbrella policy
Rates—based on size of building and per child base rate—rates vary heavily
Contact—John Cleary, 3000 Schuster Lane, Merrill, Wis. 54452, (715)536-5577.

4. **CIGNA Property and Casualty Cos.**

Type Of policy—occurrence
Child Abuse Exclusion—physical and sexual child abuse exclusion
Availability—licensed in every state
Coverage—only for child care centers
Policy Limits—up to $500,000 liability limit
Rates—rating formula based on square footage, students, National Association for the Education of Young Children criteria and fire protection. Premiums vary from center to center.
Contact—David Willis, 1600 Arch St., Philadelphia, Pa. 19103, (215)241-3851.

5. **Cincinnati Insurance Company**

Type Of Policy—occurrence policy
Child Abuse Exclusion—sexual molestation exclusion
Availability—Alabama, Florida, Georgia, Indiana, Iowa, Kentucky, Michigan, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin
Coverage—child care centers and family day care homes
Policy Limits—minimum of $100,000, policy maximum usually $300,000
Rates—about $30 to $40 per child for $300,000 policy
Contact—Robert Kerns, P.O. Box 145496, Cincinnati, Ohio 45214-5496, (513)870-2373.

6. **Continental Insurance Company**

Type Of Policy—claims-made with variations (see chapt. 3)
Child Abuse Exclusion—partial coverage (see chapt. 3)
Availability—approved in Alaska, Arkansas, California, Colorado, Delaware, Georgia, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma and Tennessee
Coverage—for centers and family day care homes
Policy Limits—either a $500,000 or $1 million annual policy
Rates—calculated per child. Depending on the claims history of the state, rates will vary from an average of $8 to $200 per child for $500,000 policy. Premiums increase by only 20 percent to 30 percent for the $1 million policy.
Contact—William Bolinder, 180 Maiden Lane, New York, N.Y. 10038, (212)440-3000.

7. **Fireman's Fund Insurance Company**

Type Of Policy—occurrence policy but gradually implementing claims-made policy
Child Abuse Exclusion—physical and sexual child abuse exclusion
Availability—on very limited basis in all states—
Coverage—child care centers
Policy Limits—normally, $500,000 up to $1 million
Rates—use the Insurance Services Office advisory rates**
Contact—James Smith, 777 San Marin Drive, Novato, Calif. 94998, (415)899-2435.

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8. **Great American Insurance Company**

Type Of Policy—usually use occurrence form but an underwriter has privilege to use claims-made
Child Abuse Exclusion—not written in standard form but can be implemented by a Great American underwriter
Availability—in all states on a very limited basis
Coverage—child care centers affiliated with churches or schools
Policy Limits—up to $1 million
Rates—use Insurance Services Office advisory rates**
Contact—Dick Koslack, 580 Walnut St., Cincinnati, Ohio 45201, (513)369-5000.

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9. **The Hartford Insurance Group**

Type Of Policy—writing occurrence policies available only through marketing assistance plans in 39 states
Child Abuse Exclusion—child physical and sexual abuse exclusion, also excludes claims from communicable diseases
Availability—contact your state insurance office to find out if it has a marketing assistance plan that covers child care and if Hartford participates in the plan.
Coverage—child care centers and family day care homes
Policy Limits—$500,000 maximum
Rates—use Insurance Services Office advisory rates**
Contact—Joe Fazzino, Hartford Plaza, Hartford, Conn. 06115, (203)547-3724.

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10. **Maryland Casualty Insurance Company**

Type Of Policy—Now switching over from occurrence to claims-made
Child Abuse Exclusion—physical and sexual child abuse exclusion for new policyholders.
Availability—all states.
Coverage—child care centers
Policy Limits—$500,000 policy
Rates—about $30 per child but varies by location and state rate structure
Contact—Donald Hutson, P.O. Box 1228, Baltimore, Md. 21203, (301)366-1000.

11. **Nationwide Insurance Company**

Type Of Policy—occurrence policy
Child Abuse Exclusion—child sexual molestation exclusion
Availability—on limited basis in all states except New Jersey
Coverage—child care centers and family day care homes
Policy Limits—up to $1 million
Rates—about $50 per child
Contact—Robert Krause, One Nationwide Plaza, Columbus, Ohio 43216, (614)249-6356.

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12. **State Farm Automobile Insurance Company**

Type Of Policy—occurrence policy
Child Abuse Exclusion—child sexual molestation exclusion
Availability—all states
Coverage—only for church-affiliated centers or family day care homes with three children or under.
Policy Limit And Rates For Day Care Homes—under home owners program for family day care homes there are two options: a $50 annual premium will purchase a $100,000 policy or a $65 annual premium will purchase a $300,000 policy.
Policy Limits And Rates For Church-Operated Centers—policy limits run from minimum of $300,000 to $3 million—rates vary according to the state. For example, a church-run center in Alabama can buy a $300,000 policy for $30. In New York the same policy would cost $216 annually no matter how many children attend. These rates apply only to church-run centers that serve only church members' children. If any other children are served, the rates would double.
Contact—David Hurst, #1 State Farm Plaza, Bloomington, Ill. 61710, (309)766-2311.

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13. **St. Paul Fire and Marine Insurance Company**

Type Of Policy—occurrence policy
Child Abuse Exclusion—physical and sexual child abuse exclusion
Availability—operate in all 50 states with limited availability in Alaska and Hawaii
Coverage—child care centers
Policy Limits—up to $1 million for primary policy, $5 million for umbrella policy
Rates—follow Insurance Services Office advisory rates**. Rates for the umbrella coverage are calculated by increments of $1 million. For the first $1 million of umbrella coverage, providers determined to be good risks would pay about 40 percent to 50 percent of the premium cost for the primary $1 million policy. Each $1 million of umbrella coverage after that would be at a cheaper rate than the one before.
Contact—Fred Themmes, 385 Washington St., St. Paul, Minn. 55102, (612)221-7461.

Excess Surplus Lines Carriers Offering New Policies

(Excess Surplus Lines Carriers are only licensed in the state where their headquarters are located and can do business in other states in which they are not licensed, but do not participate in a state guaranty fund.)

1. **Essex Insurance Company**

Type Of Policy—occurrence policy
Child Abuse Exclusion—sexual abuse exclusion
Availability—writes nationwide except in: Alaska, California, Connecticut, Idaho, Iowa, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Washington
Coverage—family day care homes and child care centers
Policy Limits—$100,000, $300,000, $500,000 maximum limit
Rates—per child at $100,000 limit, $30 per child for maximum number of children provider is licensed to serve. At $300,000, $35 per child and at $500,000, $50 per child.
Contact—Jacque Ash, 1910 Byrd Ave., Suite 201, Richmond, Va. 23230, (804)289-3870.

2. **Guaranty National/Landmark American Insurance Companies**

Type Of Policy—claims-made policy
Child Abuse Exclusion—sexual and physical child abuse exclusion
Availability—writes nationwide except in: Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, South Carolina and Vermont.
Coverage—family day care homes and child care centers
Policy Limits—normally, no more than $500,000
Rates—per child, based on Insurance Services Office advisory rates**
Contact—Bobby Maes, P.O. Box 3329, Englewood, Colo. 80155, (303)790-8200.

3. **Topa Insurance Company**

Type Of Policy—occurrence policy Child Abuse Exclusion—physical and sexual child abuse exclusion
Availability—California
Coverage—family day care homes
Policy Limits—$100,000 per claim maximum with a $300,000 aggregate (total policy limit) or $300,000 per claim maximum with $300,000 aggregate
Rates—minimum plan for $100,000 per claim policy, including $20,000 accident coverage for children and provider over and above the policy limit is $408 for 1 to 6 children. For the $300,000 per occurrence policy, it is $483 annually.
Contact—Joe Silverman, 15250 Ventura Blvd., Sherman Oaks, Calif. 91403, (818)905-0311.

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4. **Westco Insurance Group (Western World)**

Type Of Policy—occurrence policy
Child Abuse Exclusion—yes but would not say what kind
Availability—writes nationwide except in California
Coverage—refused to answer
Policy Limits—refused to answer
Rates—per child rate
Contact—Robert Edneth, 48 South Franklin Turnpike, Ramsey, N.J. 07446, (201)825-3300.

* This appendix is not a complete list of companies still in the child care market.

** The Insurance Services Office sets advisory rates that many insurers adopt to determine premiums for child care providers. Rates are available from any insurance agent or broker and vary depending on the region where the facility is located.

APPENDIX B

Glossary Of Insurance Terms

Actuary: An insurance professional whose primary functions include the determination of rates and rating methods, evaluation of reserves and other statistic-related responsibilities.

Admitted Carrier: An insurance company that is licensed in every state it operates in and participates in a state guaranty fund that protects policyholders if the company goes bankrupt.*

Agent: The "independent agent" is an independent businessperson who usually represents two or more insurance companies under contract in a sales and service capacity and who is paid on a commission basis. The "exclusive agent" represents only one company, usually on a commission basis. The "direct writer" is the salaried or commissioned employee of a single company.

Aggregate Limits: Places a maximum amount on money paid out on one policy per year no matter how many claims are filed.*

Broker: A marketing specialist who represents buyers of property and liability insurance and who deals with either agents or companies in arranging for the coverage required by the customer.

Civil Suit: Action between two individuals brought to enforce, redress or protect private rights. In the case of child sexual abuse, an individual can sue an alleged molester for damages incurred by a criminal act. Those damages can be personal or bodily injury.*

Claims-Made Form: A claims-made policy usually requires the provider to have a policy in force when the accident occurs and when the claim is made.*

Criminal Suit: Can only be filed by the state and involves alleged criminal acts that harm society.*

Endorsement: A form attached to an insurance policy to add to, alter or vary its provisions.

Excess Surplus Lines Carrier (nonadmitted carrier): These companies provide a sizable share of insurance for the child care market. Surplus lines carriers are only licensed in the state where their headquarters are located and can do business in other states in which they are not licensed.*

Exclusion: A provision in an insurance policy that denies coverage for certain perils, persons, property or locations.

Exposure: The state of being subject to the possibility of loss. In child care, many insurers seek to limit their exposures by refusing to pay on child abuse claims.

General Liability Insurance: Form of coverage that pertains, for the most part, to claims arising out of the insured's liability for injuries or damage caused by ownership of property, contracting operations, as well as professional services.

Group Insurance: Any insurance plan under which a number of persons and their dependents are insured under a single policy, issued to their employer or to an association with which they are affiliated, with individual certificates given to each insured person.

Guaranty Fund: A fund, derived from assessments against solvent insurance companies, to absorb losses of claimants against insolvent insurers.

Joint and Several Liability: This policy allows the court to require a defendant who is only slightly responsible for a plaintiff's loss to pay the entire loss because of the financial irresponsibility of a co-defendant who is a larger contributor to the injury.*

Joint Underwriting Association: Brought about by state legislation, a JUA usually forces all licensed carriers of a particular line to form an insurance pool in the state where they are required to insure high risk industries that cannot find insurance elsewhere such as child care.*

Liability: Any legally enforceable obligation

Liability Insurance: Insurance covering the policyholder's legal liability for injuries to other persons or damage to their property.

Marketing Assistance Plan: A plan in which a group of insurers in one state decides to voluntarily offer coverage to high risk industries, with the option of turning down bad risks.*

Negligence: Failure to use the degree of care that a person of reasonable prudence would use under given or similar circumstances.

Occurrence Form: An occurrence policy, which is the most helpful to a child care provider, usually will cover claims filed years after a policy has expired as long as the accident or injury occurred when the policy was in effect.*

Per Occurrence Policy: Annual policy limit is potentially available each time an accident or injury occurs during one year.*

Policy Tail: The length of time a liability policy will cover claims filed after the policy expires or is terminated.*

Premium: The sum paid for an insurance policy.

Product Liability Insurance: Protection against financial loss arising out of the legal liability incurred by a manufacturer, merchant or distributor because of injury or damage resulting from the use of a product specifically covered by the policy.

Professional Liability Insurance: Coverage for a professional practitioner against liability claims for damages resulting from alleged malpractice in the performance of the insured's services. Often called malpractice insurance.

Property/Casualty Insurance: Insurance concerned primarily with the insured's legal liability for injuries to others or for damage to other persons' property.

Rate: The cost of a given unit of insurance, on which a premium is based.

Reinsurance: Assumption by one insurance company of all or part of a risk undertaken by another insurance company.

Self Insurance: An arrangement through which some firms and individuals plan to assume all or a portion of their own losses. Self-insurers often establish special funds for this purpose, and purchase insurance to cover losses in excess of predetermined amounts.

Tort: A wrongful act, resulting in injury or damage, on which a civil action may be based.

Umbrella Policy: A form of insurance protection against losses in excess of the amount covered by other liability insurance policies; also protects the insured in many situations not covered by the usual liability policies.

Vicarious Liability: Indirect legal responsibility—for example, the liability of an employer for the acts of an employee.*

* *All terms except those followed by an asterisk are defined by the Insurance Information Institute. Those terms followed by an asterisk are defined by other insurance sources.*

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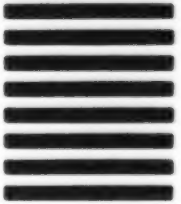

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